IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 5703 (S/S) of 2001

(Old No. 34656 of 1993)

Rajendra Prasad Tamta
S/o Late Sri Pyare Lal Tamta
R/o Dhani Lal Shah Building
Zeruri Bazar, Ranikhet
District Almora. ……Petitioner

Versus

1. The Director of Horticulture & Food Processing, U.P. Hill Udyan Bhawan Ranikhet, District Almora.
2. The State of Uttar Pradesh.

……Respondents

Shri B.D. Upadyaya, learned counsel for the petitioner.
Shri N. P. Sah, learned Standing Counsel for the respondents.

Hon'ble Prafulla C. Pant, J

By means of this writ petition, the petitioner has sought with in the nature of certiorari quashing orders dated 22.07.1993 and 18.08.1993, passed by respondent No. 1, against the petitioner. By the impugned orders, the petitioner has been reverted from the post of Senior Clerk to the post of Junior Clerk.

2. Heard learned counsel for the parties.

3. Brief facts of the case as narrated in the writ petition are that the petitioner was appointed as Junior Clerk by Director, Horticulture. In the 1987, considering his

work and conduct, he was promoted to the post of Senior Clerk in the pay scale of Rs. 1200-2040, by respondent No. 1. It is pleaded in the writ petition that Horticulture Department, used to purchase certain pesticides, for protection of the plants and the purchasing authority was District Horticulture Officer. In the year 1985, when the petitioner was Junior Clerk, a list for purchase of certain insecticides/pesticides, was prepared by him in Hindi under instructions of one Batuk Nath Pandey, Plant Protection Officer. A meeting was held on 19.09.1985, under the chairmanship of Mr. R. Ramani, Director of Horticulture. In the meeting, the petitioner circulated the list of items to be purchased. Later after seven years in the year 1992, the petitioner was served with the charge sheet that he in collusion with the aforesaid Batuk Nath Pandey, Plant Protection Officer, Pitamber Datt Badhani, Senior Plant Protection Officer and Har Prakash Sharma, Proprietor Farms Friends, Kashipur, prepared the list for the meeting held on 19.09.1985. The petitioner replied the charge sheet. After enquiry was completed, a report was submitted by the Inquiry Officer to respondent No. 1, who issued show cause notice on 31.05.1993, along with enquiry report to the petitioner, and finally passed order dated 22.09.1993, reverting the petitioner from the post of Senior Clerk to the post of Junior

Clerk. It is alleged in the writ petition that the petitioner was simply Junior Clerk and he was distributed copies of the list to the members, attending the meeting under the instructions of his senior officers- Plant Protection Officer etc. It is further stated in the writ petition that disciplinary proceedings were initiated against the petitioner and he has been punished after seven years of the incident that too for simply distributing the list given by his seniors to be provided at the time of the meeting.

4. A counter affidavit has been filed on behalf of the respondents in which it is stated that the officers of the Department were in league with the firm M/s Farms Friends Kashipur, from where purchases of pesticides, insecticides and medicines were to be made. It is stated in the counter affidavit that the petitioner was rightly found guilty of charge, framed against him. As to the seven years period between the above incident and furnishing of charge sheet, it is stated in the counter affidavit that there is no limitation provided under the Rules for that purpose.

5. This writ petition was filed before Allahabad High Court in the year 1993, from where it has been received by transfer to this Court, under Section 35 of U.P. Reorganisation

Act, 2000, for its disposal. The Allahabad High Court vide its order dated 21.09.1993, stayed the operation of the impugned order of punishment, passed by respondent No. 1.

6. Learned counsel for the petitioner submitted that meanwhile, the petitioner has got three further promotions and now holds post of Administrative Officer in the Directorate of Horticulture. It is further submitted that petitioner is going to retire on 30.09.2007.

7. Learned counsel for the petitioner submitted that in the year 1985, the petitioner was simply a Junior Clerk, who in obedience of his senior officers only distributed the list of pesticides/insecticides/medicines to the members attending the meeting. It is further stated that he is not a technical man to know that what is being purchased. It is vehemently argued that a charge sheet was submitted against the petitioner after seven years of the incident and as such in such a case, no major punishment should have been awarded against the petitioner.

8. While examining the legality of the impugned orders of punishment, this Court has only to see whether the principles of natural justice are followed or not and whether the opportunity of being heard is given to the

delinquent official or not. This Court is not supposed to go to the factual merits of the case. Admittedly, the petitioner was given opportunity of being heard and was served with the enquiry report also at the stage before the punishment was awarded. As such, as far as the proceedings of inquiry are concerned, this Court is satisfied that in the proceedings of enquiry there appears to be no illegality. But as far as, awarding of major punishment is concerned, it is pertinent to mention here that the petitioner was simply a Junior Clerk and not a technical man, who was acting in the direction of his superior officers while providing the list of the pesticides/insecticides/medicines, to the members attending the meeting. In such circumstances, for that conduct, awarding major punishment, appears to be disproportionate to the charge labeled against the petitioner.

9. In the circumstances, this petition is disposed of with the direction that the authorities concerned shall take fresh decision within a period of three months from the date of certified copy of this order is produced on the quantum of punishment, awarded against the petitioner in the light of the observation made by this Court, as above. And awarding of the major punishment against the petitioner, reverting him

from the post of Senior Clerk to the post of Junior Clerk, accordingly stands quashed.

Dt. 27.09.2007 **(Prafulla C. Pant, J.)**

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